Zoning Board of Appeals July 11, 2013

The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main St., Elm Sq., Andover

The meeting opened at 7:08 p.m.

Present were: Anderson (Chair); McDonough (Clerk); Brown (arrived at 7:11); Boness (Member); Magenheim, Bargnesi &

Oltman (Associate Members)

Petition No.: 4025

Premises affected: 6 Prospect Rd

Petitioner: Jeffco

Present were: Anderson (Chair); McDonough (Clerk); Brown (arrived at 7:11); Boness (Member); Magenheim, Bargnesi &

Oltman (Associate Members)

Attorney Don Borenstein was present for Attorney Mark Johnson along with George Hughes, of Jeffco. This continued public hearing opened in April. Anderson asked if the handwritten notes on the plan received 7/1013 reflect the changes since the last hearing. Hughes confirmed; the plan includes Preservation's changes & conditions. Anderson requested official plans without hand written notes. Borenstein updated the Board on what has been done since the last hearing: drafted a decision submitted by email and in May appeared before Preservation Commission (changes approved). Brown noted that the plans referred to in the draft with a date of 5/20/13 are different than the plans dated 7/10/13: the Preservation memo dated 5/17/13 includes a vestibule entry that is not on the plot plan. Consistency between the plot plan, house plan & the plan approved by Preservation is required. Hughes agreed to submit proper plans if the Board approves the application. The Board discussed the vestibule entry & whether it would comply with setbacks. Hughes informed the Board that at the Preservation Commission meeting two nights ago, the approved plan excluded a vestibule. Brown offered to incorporate into the decision the Preservation Commission Chair Karen Hermann's email dated 7/9/13 referencing 6/17/13 plans. He added that any changes to the drawings must be approved by Preservation Commission as a condition of ZBA approval. Brown then made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) [Anderson, McDonough, Brown, Magenheim, Bargnesi] to close the hearing. The Board then proceeded to deliberate. Brown made a motion to grant the special permit under Art. VIII, Section 3.3.7 with the condition to adopt the findings of the draft decision and conditions that the house be constructed in conformance with the plot plan and architectural plans as approved by the Preservation Commission, that were received tonight by the ZBA. Additionally, construction must be completed within 24 months. Brown also made a motion to find that a special permit under Section 3.3.5 is not applicable and to deny it as not applicable, as well as to deny the variance as moot. McDonough seconded the motion. Anderson amended the motion to include the condition that the official final plans with notes incorporating & consistent with the Preservation Commission decision (7/9/13) must be submitted to the ZBA & the Inspector of Buildings. The amendment was accepted and the Board voted (5-0) to approve the special permit with conditions and to deny the variance as moot. Brown will write the decision.

Petition No.: 4042

Premises affected: 36 Boston Rd

Petitioner: Jeffco, Inc.

Present were: Brown (Acting Chair); Boness (Acting Clerk); Bargnesi & Oltman (Associate Members)

Attorney Don Borenstein represented the petitioner, George Hughes of Jeffco, in the continued hearing for a special permit under 3.3.5 &/or 3.3.7 to demolish the existing house and build a new single family dwelling, neither of which conform to dimensional requirements. The proposed plans were updated 6/13/13 & should match the plot plan on file. The full shed dormer on the rear of the house has been eliminated. The plot plan of record is prepared by Andover Consultants dated 4-26-13. Attorney Irving Kane, 85 Exchange St., Lynn, MA representing Mr. Arsenault, abutter at 32 Boston Rd., voiced concern over the proposed house's height & opposed the project as more detrimental to the neighborhood. The Board discussed the volume of the proposed house, which includes an attic with full stairs intended for possible future living space. Arthur Nicolaisen, 38

Zoning Board of Appeals July 11, 2013

The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main St., Elm Sq., Andover

Boston Rd., spoke in favor. Borenstein stated that the proposed house is in character with the neighborhood, while Attorney Kane argued it is a dramatic change from 960 to 2600 s.f. Ms. Cummings, owner of 36 Boston Rd., commented on the defects in the existing house & that any buyer would increase the size of the home. The Board waived a site view. Bargnesi made a motion to close the public hearing. Boness seconded the motion & the Board voted (4-0) to close the hearing. The Board then proceeded to deliberate. Bargnesi pointed out that the requested changes were made by the applicant & it is in harmony with the neighborhood and not detrimental. Oltman, Boness & Brown agreed. Boness made a motion to grant a special permit under Art. VIII, Section 3.3.7 to raze the existing pre-existing non-conforming single family dwelling and build a new, larger dwelling in conformance with the plot plan & architectural plans/elevations submitted with the conditions that construction is completed within 24 months. The Board finds that the proposed dwelling is in scale with the neighborhood and not more detrimental than the existing dwelling. Boness also made a motion to find that the special permit request under Section 3.3.5 is not applicable and to deny the variance from Section 4.1.2 as moot. Bargnesi seconded the motion & the Board voted (4-0) to approve the special permit under 3.3.7 with conditions, find 3.3.5 is not applicable & to deny the variance under 4.1.2 as moot. Brown will write the decision. Attorney Kane noted his objection to not being allowed to speak further. Anderson noted that Kane was allowed to speak longer than anyone else in opposition.

Member Boness left the room for the following case.

Petition No.: 4045

Premises affected: 6 Robinswood Way

Petitioner: O'Connell

Present were: Anderson (Chair); McDonough (Clerk); Brown (Member); Magenheim, Bargnesi & Oltman (Associate Members)

Attorney Bob Lavoie, 12 Chestnut St, Andover, represented the O'Connell's in their request for a variance from 8.1.6.5 &/or a special permit under 3.3.3 to remove an existing sports court & construct a new one that will be within 50' of a water body the WPOD. Lavoie explained that the lot was created as part of a 1973 subdivision with 35,000 sq. ft. of area at the end of the cul de sac near wetlands. They have filed with & will appear at Conservation Commission next Tuesday. The proposed setback of 24' is the same as the existing. The new court will be permeable and have sump drains, a 1% slope to aid drainage into the sumps and more environmentally friendly materials. Netting will be installed to contain activity and the use is not dangerous. Lavoie emphasized the pentagon shape of the lot. The existing compacted stone dust with rug covered court is 24'x40', the proposed is 36'x61'. Anderson disclosed that he knows Mr. O'Connell from playing hockey. No one objected to Anderson's participation in the case. Anderson noted that the existing court protrudes into the 50' WPOD setback & the new court will encroach even further. Lavoie argued that the topographical constraints: wetlands, slope, shape of the lot create a hardship. The new court will be permeable with a drainage system to recharge run-off. Anderson noted for the record that Member Boness recused himself for this case & is not present. John Campbell, sports court installer, clarified that the court is impermeable & will be crowned at the center to aid drainage into the recharge trenches at each end. Atop the concrete will be interlocking tile. The drainage engineering was submitted to Conservation Commission with the Notice of Intent (NOI). Tom Doyle, 15 year resident at 16 Tiffany Lane, abutter to the rear of the O'Connell's, stated his concern over the increased water levels in the wetlands. Mr. O'Connell stated that the watershed area has experienced a change in the wetlands due to beavers, not construction. Attorney Lavoie submitted two photos. The Board waived a site view. Brown voiced his reluctance to vote prior to hearing input from the expertise of the Conservation Commission. The Board agreed and McDonough made a motion to continue the hearing to 8/1/13. Magenheim seconded the motion & the Board voted (6-0) to continue the hearing to 8/1/13. Brown noted that he will not be present on 8/1/13.

Zoning Board of Appeals July 11, 2013

The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main St., Elm Sq., Andover

Petition No.: 4044

Premises affected: 89-91 Main St Petitioner: Lincoln Essex OAV, LLC

Present were: Anderson (Chair); McDonough (Clerk); Brown & Boness (Members); Magenheim, Bargnesi & Oltman (Associate

Members)

Attorney Jared Eigman, of Dalton & Finegold, was present along with John Fenton, manager/owner of the property to request relief for 8 attached signs: 4 projecting & 4 banners. Four of these signs will exceed the number of signs allowed by right. They have been to DRB for review. There will be two projecting signs per tenant. The Board discussed the density of projecting signs for the span of the building. Eigman noted that the lot is 130' wide at the frontage. Fenton explained the purpose of the different signs: to attract vehicular & pedestrian traffic. The wall signs will be lit by gooseneck lamps externally. Each tenant will have a maximum of one projecting sign of up to 9 sq. ft. area on the façade of the building. The bylaw allows one projecting sign per tenant per façade with a door or window. The proposal is for 4 15 sq. ft. banners on the Main Street façade. The plan depicts a sign for Dunkin Donuts on the driveway side of the building. Eigman agreed to withdraw the Dunkin Donuts sign request without prejudice. The Board waived a site view. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (7-0) to close the hearing. The Board then proceeded to deliberate. McDonough & Magenheim sat off the remainder of the case. Boness made a motion to approve a special permit under Art. VIII, Section 5.2.9.3.d to allow four (4) projecting banner signs on the façade facing Main Street with the following conditions: no tenant / business can have more than one sign on Main Street and the size of the signs must be in accordance with the bylaw allowance. Brown seconded the motion. Anderson added that the signs will be unlit. The Board voted (5-0) to grant the special permit with conditions. Boness will write the decision.

The Board was unable to approve the minutes of 8/2/12 since there was not a quorum present to approve them. There being no other business, the Board voted unanimously to adjourn the hearing.